IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10482 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESHAJI DEVUJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR MITUL K SHELAT for Petitioner

MR KT DAVE, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 02/05/2000

ORAL JUDGEMENT

1. District Magistrate, Patan, passed an order on October 15, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Keshaji Devuji Thakore, under the provisions

of the said Act.

2. The detaining authority took into consideration five offences registered against the petitioner, so also the statements of six anonymous witnesses. The detaining authority considered the activities of the detenu as that of a dangerous person and a bootlegger, as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority exercised the powers under Section 9(2) of the PASA Act and kept the identity of the witnesses secret. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Mr. Shelat, learned advocate appearing for the petitioner, by way of legal aid, submitted that there is improper exercise of powers under Section 9(2) of the PASA Act. He submitted that the detaining authority has personally not verified the correctness or genuineness of the fear expressed by the anonymous witnesses and has exercised the powers only on basis of some verification done by other officers. He has placed reliance on the decision in the case of Mohmed Sarif alias Kalio Nurmohmadsarnibapu Shaikh v. Commissioner of Police, Ahmedabad, 1997(1) GLH 1017 so also the decision in the case of Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186. He submitted that there is no contemporaneous material to indicate undertaking of exercise by the detaining authority expected of it while exercising the powers under Section 9(2) of the PASA Act.

3.1 Mr. Shelat submitted further that, if the offences registered against the detenu are seen, out of five offences, three are pre-1998 incidents. One case is of 1996 and the rest are of 1997 and, therefore, on these stale incidents, satisfaction could not have been based by the detaining authority as there is want of livelink between the incident and the order. As regards the last offence, namely, C.R. No.124 of 1999, Mr. Shelat submitted that it is an incident of individual character. There is nothing to indicate any disturbance to public order and, therefore, the subjective satisfaction arrived at by the detaining authority about the activities of the detenu being detrimental to public order is not genuine and he submitted that the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Considering rival side contentions, it appears that the detaining authority itself has not verified the correctness and genuineness of the fear expressed by the witnesses. Barring the statement in the grounds of detention, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenu while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenu of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under Section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under Section 9(2), as there is no material to indicate the exercise as stated above (Bai Amina v. State of Gujarat & Ors., 1981 GLR 1186).

6. Adverting to the offences registered against the detenu, the first four incidents involving the petitioner in the registered offences are stale and there is no causal connection. The authority could not have relied upon these incidents. The last incident is of an individual character and there is nothing to indicate any disturbance to public order. For branding the detenu as dangerous person, there is no material nor is there any material to label him as a bootlegger. The satisfaction and consequential order of detention, therefore, cannot be sustained. The petition deserves to be allowed.

7. In the result, the petition is allowed. The impugned order of detention dated October 15, 1999, passed against the detenu is hereby quashed. The detenu-Keshaji Devuji Thakore is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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